

104TH CONGRESS
2D SESSION

H. R. 3286

IN THE SENATE OF THE UNITED STATES

MAY 13, 1996

Received; read twice and referred to the Committee on Finance

MAY 23, 1996

Ordered, if and when reported by the Committee on Finance the bill then be referred to the Committee on Indian Affairs for the purpose of considering title 3, for a period of 10 days of session, to report or be discharged

AN ACT

To help families defray adoption costs, and to promote the adoption of minority children.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Adoption Promotion
5 and Stability Act of 1996”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—CREDIT FOR ADOPTION EXPENSES

Sec. 101. Credit for adoption expenses.

TITLE II—INTERETHNIC ADOPTION

Sec. 201. Removal of barriers to interethnic adoption.

**TITLE III—CHILD CUSTODY PROCEEDINGS AFFECTED BY THE
INDIAN CHILD WELFARE ACT OF 1978**

Sec. 301. Inapplicability of the Indian Child Welfare Act of 1978 to child custody proceedings involving a child whose parents do not maintain affiliation with their Indian tribe.

Sec. 302. Membership and child custody proceedings.

Sec. 303. Effective date.

TITLE IV—REVENUE OFFSETS

Sec. 400. Amendment of 1986 Code.

**Subtitle A—Exclusion for Energy Conservation Subsidies Limited to Subsidies
With Respect to Dwelling Units**

Sec. 401. Exclusion for energy conservation subsidies limited to subsidies with respect to dwelling units.

Subtitle B—Foreign Trust Tax Compliance

Sec. 411. Improved information reporting on foreign trusts.

Sec. 412. Comparable penalties for failure to file return relating to transfers to foreign entities.

Sec. 413. Modifications of rules relating to foreign trusts having one or more United States beneficiaries.

Sec. 414. Foreign persons not to be treated as owners under grantor trust rules.

Sec. 415. Information reporting regarding foreign gifts.

Sec. 416. Modification of rules relating to foreign trusts which are not grantor trusts.

Sec. 417. Residence of trusts, etc.

3 **TITLE I—CREDIT FOR ADOPTION**
4 **EXPENSES**

5 **SEC. 101. CREDIT FOR ADOPTION EXPENSES.**

6 (a) IN GENERAL.—Subpart A of part IV of sub-
7 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to nonrefundable personal credits) is
2 amended by inserting after section 22 the following new
3 section:

4 **“SEC. 23. ADOPTION EXPENSES.**

5 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
6 dividual, there shall be allowed as a credit against the tax
7 imposed by this chapter for the taxable year the amount
8 of the qualified adoption expenses paid or incurred by the
9 taxpayer during such taxable year.

10 “(b) LIMITATIONS.—

11 “(1) DOLLAR LIMITATION.—The aggregate
12 amount of qualified adoption expenses which may be
13 taken into account under subsection (a) for all tax-
14 able years with respect to the adoption of a child by
15 the taxpayer shall not exceed \$5,000.

16 “(2) INCOME LIMITATION.—The amount allow-
17 able as a credit under subsection (a) for any taxable
18 year shall be reduced (but not below zero) by an
19 amount which bears the same ratio to the amount
20 so allowable (determined without regard to this
21 paragraph but with regard to paragraph (1)) as—

22 “(A) the amount (if any) by which the tax-
23 payer’s adjusted gross income (determined
24 without regard to sections 911, 931, and 933)
25 exceeds \$75,000, bears to

1 “(B) \$40,000.

2 “(3) DENIAL OF DOUBLE BENEFIT.—

3 “(A) IN GENERAL.—No credit shall be al-
4 lowed under subsection (a) for any expense for
5 which a deduction or credit is allowable under
6 any other provision of this chapter.

7 “(B) GRANTS.—No credit shall be allowed
8 under subsection (a) for any expense to the ex-
9 tent that funds for such expense are received
10 under any Federal, State, or local program.
11 The preceding sentence shall not apply to ex-
12 penses for the adoption of a child with special
13 needs.

14 “(C) REIMBURSEMENT.—No credit shall
15 be allowed under subsection (a) for any expense
16 to the extent that such expense is reimbursed
17 and the reimbursement is excluded from gross
18 income under section 137.

19 “(c) CARRYFORWARDS OF UNUSED CREDIT.—If the
20 credit allowable under subsection (a) for any taxable year
21 exceeds the limitation imposed by section 26(a) for such
22 taxable year reduced by the sum of the credits allowable
23 under this subpart (other than this section), such excess
24 shall be carried to the succeeding taxable year and added
25 to the credit allowable under subsection (a) for such tax-

1 able year. No credit may be carried forward under this
2 subsection to any taxable year following the fifth taxable
3 year after the taxable year in which the credit arose. For
4 purposes of the preceding sentence, credits shall be treated
5 as used on a first-in first-out basis.

6 “(d) DEFINITIONS.—For purposes of this section—

7 “(1) QUALIFIED ADOPTION EXPENSES.—The
8 term ‘qualified adoption expenses’ means reasonable
9 and necessary adoption fees, court costs, attorney
10 fees, and other expenses—

11 “(A) which are directly related to, and the
12 principal purpose of which is for, the legal
13 adoption of an eligible child by the taxpayer,
14 and

15 “(B) which are not incurred in violation of
16 State or Federal law or in carrying out any sur-
17rogate parenting arrangement.

18 “(2) EXPENSES FOR ADOPTION OF SPOUSE’S
19 CHILD NOT ELIGIBLE.—The term ‘qualified adoption
20 expenses’ shall not include any expenses in connec-
21tion with the adoption by an individual of a child
22who is the child of such individual’s spouse.

23 “(3) ELIGIBLE CHILD.—The term ‘eligible
24child’ means any individual—

1 “(A) who has not attained age 18 as of the
2 time of the adoption, or

3 “(B) who is physically or mentally incapa-
4 ble of caring for himself.

5 “(4) CHILD WITH SPECIAL NEEDS.—The term
6 ‘child with special needs’ means any child if—

7 “(A) a State has determined that the child
8 cannot or should not be returned to the home
9 of his parents, and

10 “(B) such State has determined that there
11 exists with respect to the child a specific factor
12 or condition (such as his ethnic background,
13 age, or membership in a minority or sibling
14 group, or the presence of factors such as medi-
15 cal conditions or physical, mental, or emotional
16 handicaps) because of which it is reasonable to
17 conclude that such child cannot be placed with
18 adoptive parents without providing adoption as-
19 sistance.

20 “(e) SPECIAL RULES FOR FOREIGN ADOPTIONS.—In
21 the case of a foreign adoption—

22 “(1) subsection (a) shall not apply to any quali-
23 fied adoption expense with respect to such adoption
24 unless such adoption becomes final, and

1 “(2) any such expense which is paid or incurred
 2 before the taxable year in which such adoption be-
 3 comes final shall be taken into account under this
 4 section as if such expense were paid or incurred dur-
 5 ing such year.

6 “(f) MARRIED COUPLES MUST FILE JOINT RE-
 7 TURNS.—Rules similar to the rules of paragraphs (2), (3),
 8 and (4) of section 21(e) shall apply for purposes of this
 9 section.

10 “(g) BASIS ADJUSTMENTS.—For purposes of this
 11 subtitle, if a credit is allowed under this section for any
 12 expenditure with respect to any property, the increase in
 13 the basis of such property which would (but for this sub-
 14 section) result from such expenditure shall be reduced by
 15 the amount of the credit so allowed.

16 “(h) REGULATIONS.—The Secretary shall prescribe
 17 such regulations as may be appropriate to carry out this
 18 section and section 137, including regulations which treat
 19 unmarried individuals who pay or incur qualified adoption
 20 expenses with respect to the same child as 1 taxpayer for
 21 purposes of applying the dollar limitation in subsection
 22 (b)(1) of this section and in section 137(b)(1).”.

23 (b) EXCLUSION OF AMOUNTS RECEIVED UNDER EM-
 24 PLOYER’S ADOPTION ASSISTANCE PROGRAMS.—Part III
 25 of subchapter B of chapter 1 of such Code (relating to

1 items specifically excluded from gross income) is amended
2 by redesignating section 137 as section 138 and by insert-
3 ing after section 136 the following new section:

4 **“SEC. 137. ADOPTION ASSISTANCE PROGRAMS.**

5 “(a) IN GENERAL.—Gross income of an employee
6 does not include amounts paid or expenses incurred by the
7 employer for qualified adoption expenses in connection
8 with the adoption of a child by an employee if such
9 amounts are furnished pursuant to an adoption assistance
10 program.

11 “(b) LIMITATIONS.—

12 “(1) DOLLAR LIMITATION.—The aggregate
13 amount excludable from gross income under sub-
14 section (a) for all taxable years with respect to the
15 adoption of a child by the taxpayer shall not exceed
16 \$5,000.

17 “(2) INCOME LIMITATION.—The amount ex-
18 cludable from gross income under subsection (a) for
19 any taxable year shall be reduced (but not below
20 zero) by an amount which bears the same ratio to
21 the amount so excludable (determined without re-
22 gard to this paragraph but with regard to paragraph
23 (1)) as—

1 “(A) the amount (if any) by which the tax-
2 payer’s adjusted gross income exceeds \$75,000,
3 bears to

4 “(B) \$40,000.

5 “(3) DETERMINATION OF ADJUSTED GROSS IN-
6 COME.—For purposes of paragraph (2), adjusted
7 gross income shall be determined—

8 “(A) without regard to this section and
9 sections 911, 931, and 933, and

10 “(B) after the application of sections 86,
11 135, 219, and 469.

12 “(c) ADOPTION ASSISTANCE PROGRAM.—For pur-
13 poses of this section, an adoption assistance program is
14 a plan of an employer—

15 “(1) under which the employer provides employ-
16 ees with adoption assistance, and

17 “(2) which meets requirements similar to the
18 requirements of paragraphs (2), (3), and (5) of sec-
19 tion 127(b).

20 An adoption reimbursement program operated under sec-
21 tion 1052 of title 10, United States Code (relating to
22 armed forces) or section 514 of title 14, United States
23 Code (relating to members of the Coast Guard) shall be
24 treated as an adoption assistance program for purposes
25 of this section.

1 “(d) QUALIFIED ADOPTION EXPENSES.—For pur-
 2 poses of this section, the term ‘qualified adoption ex-
 3 penses’ has the meaning given such term by section 23(d).

4 “(e) CERTAIN RULES TO APPLY.—Rules similar to
 5 the rules of subsections (e) and (g) of section 23 shall
 6 apply for purposes of this section.”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) Sections 86(b)(2)(A) and 135(c)(4)(A) of
 9 such Code are each amended by inserting “137,” be-
 10 fore “911”.

11 (2) Clause (i) of section 219(g)(3)(A) of such
 12 Code is amended by inserting “, 137,” before “and
 13 911”.

14 (3) Clause (ii) of section 469(i)(3)(E) of such
 15 Code is amended to read as follows:

16 “(ii) the amounts excludable from
 17 gross income under sections 135 and
 18 137,”.

19 (4) Subsection (a) of section 1016 of such Code
 20 is amended by striking “and” at the end of para-
 21 graph (24), by striking the period at the end of
 22 paragraph (25) and inserting “, and”, and by add-
 23 ing at the end the following new paragraph:

24 “(26) to the extent provided in sections 23(g)
 25 and 137(e).”

1 (5) The table of sections for subpart A of part
 2 IV of subchapter A of chapter 1 of such Code is
 3 amended by inserting after the item relating to sec-
 4 tion 22 the following new item:

“Sec. 23. Adoption expenses.”.

5 (6) The table of sections for part III of sub-
 6 chapter B of chapter 1 of such Code is amended by
 7 striking the item relating to section 137 and insert-
 8 ing the following:

“Sec. 137. Adoption assistance programs.

“Sec. 138. Cross reference to other Acts.”.

9 (d) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to taxable years beginning after
 11 December 31, 1996.

12 **TITLE II—INTERETHNIC** 13 **ADOPTION**

14 **SEC. 201. REMOVAL OF BARRIERS TO INTERETHNIC ADOP-** 15 **TION.**

16 (a) STATE PLAN REQUIREMENTS.—Section 471(a)
 17 of the Social Security Act (42 U.S.C 671(a)) is amend-
 18 ed—

19 (1) by striking “and” at the end of paragraph
 20 (16);

21 (2) by striking the period at the end of para-
 22 graph (17) and inserting “; and”; and

23 (3) by adding at the end the following:

1 “(18) not later than January 1, 1997, provides
2 that neither the State nor any other entity in the
3 State that receives funds from the Federal Govern-
4 ment and is involved in adoption or foster care
5 placements may—

6 “(A) deny to any person the opportunity to
7 become an adoptive or a foster parent, on the
8 basis of the race, color, or national origin of the
9 person, or of the child, involved; or

10 “(B) delay or deny the placement of a
11 child for adoption or into foster care, on the
12 basis of the race, color, or national origin of the
13 adoptive or foster parent, or the child, in-
14 volved.”.

15 (b) ENFORCEMENT.—Section 474 of such Act (42
16 U.S.C. 674) is amended by adding at the end the follow-
17 ing:

18 “(d)(1) If a State’s program operated under this part
19 is found, as a result of a review conducted under section
20 1123, to have violated section 471(a)(18) during a quarter
21 with respect to any person, then, notwithstanding sub-
22 section (a) of this section and any regulations promulgated
23 under section 1123(b)(3), the Secretary shall reduce the
24 amount otherwise payable to the State under this part,
25 for the quarter and for each subsequent quarter before

1 the 1st quarter for which the State program is found, as
2 a result of such a review, not to have violated section
3 471(a)(18) with respect to any person, by—

4 “(A) 2 percent of such otherwise payable
5 amount, in the case of the 1st such finding with re-
6 spect to the State;

7 “(B) 5 percent of such otherwise payable
8 amount, in the case of the 2nd such finding with re-
9 spect to the State; or

10 “(C) 10 percent of such otherwise payable
11 amount, in the case of the 3rd or subsequent such
12 finding with respect to the State.

13 “(2) Any other entity which is in a State that receives
14 funds under this part and which violates section
15 471(a)(18) during a quarter with respect to any person
16 shall remit to the Secretary all funds that were paid by
17 the State to the entity during the quarter from such funds.

18 “(3)(A) Any individual who is aggrieved by a viola-
19 tion of section 471(a)(18) by a State or other entity may
20 bring an action seeking relief from the State or other en-
21 tity in any United States district court.

22 “(B) An action under this paragraph may not be
23 brought more than 2 years after the date the alleged viola-
24 tion occurred.

1 “(4) This subsection shall not be construed to affect
2 the application of the Indian Child Welfare Act of 1978.”.

3 (c) CIVIL RIGHTS.—

4 (1) PROHIBITED CONDUCT.—A person or gov-
5 ernment that is involved in adoption or foster care
6 placements may not—

7 (A) deny to any individual the opportunity
8 to become an adoptive or a foster parent, on the
9 basis of the race, color, or national origin of the
10 individual, or of the child, involved; or

11 (B) delay or deny the placement of a child
12 for adoption or into foster care, on the basis of
13 the race, color, or national origin of the adop-
14 tive or foster parent, or the child, involved.

15 (2) ENFORCEMENT.—Noncompliance with para-
16 graph (1) is deemed a violation of title VI of the
17 Civil Rights Act of 1964.

18 (3) NO EFFECT ON THE INDIAN CHILD WEL-
19 FARE ACT OF 1978.—This subsection shall not be
20 construed to affect the application of the Indian
21 Child Welfare Act of 1978.

22 (d) CONFORMING REPEAL.—Section 553 of the How-
23 ard M. Metzenbaum Multiethnic Placement Act of 1994
24 (42 U.S.C. 5115a) is repealed.

1 **TITLE III—CHILD CUSTODY PRO-**
2 **CEEDINGS AFFECTED BY THE**
3 **INDIAN CHILD WELFARE ACT**
4 **OF 1978**

5 **SEC. 301. INAPPLICABILITY OF THE INDIAN CHILD WEL-**
6 **FARE ACT OF 1978 TO CHILD CUSTODY PRO-**
7 **CEEDINGS INVOLVING A CHILD WHOSE PAR-**
8 **ENTS DO NOT MAINTAIN AFFILIATION WITH**
9 **THEIR INDIAN TRIBE.**

10 Title I of the Indian Child Welfare Act of 1978 (25
11 U.S.C. 1911 et seq.) is amended by adding at the end
12 the following:

13 “SEC. 114. (a) This title does not apply to any child
14 custody proceeding involving a child who does not reside
15 or is not domiciled within a reservation unless—

16 “(1) at least one of the child’s biological par-
17 ents is of Indian descent; and

18 “(2) at least one of the child’s biological par-
19 ents maintains significant social, cultural, or politi-
20 cal affiliation with the Indian tribe of which either
21 parent is a member.

22 “(b) The factual determination as to whether a bio-
23 logical parent maintains significant social, cultural, or po-
24 litical affiliation with the Indian tribe of which either par-

ent is a member shall be based on such affiliation as of the time of the child custody proceeding.

“(c) The determination that this title does not apply pursuant to subsection (a) is final, and, thereafter, this title shall not be the basis for determining jurisdiction over any child custody proceeding involving the child.”.

SEC. 302. MEMBERSHIP AND CHILD CUSTODY PROCEEDINGS.

Title I of the Indian Child Welfare Act of 1978 (25 U.S.C. 1911 et seq.), as amended by section 301 of this title, is further amended by adding at the end the following:

“SEC. 115. (a) A person who attains the age of 18 years before becoming a member of an Indian tribe may become a member of an Indian tribe only upon the person’s written consent.

“(b) For the purposes of any child custody proceeding involving an Indian child, membership in an Indian tribe shall be effective from the actual date of admission to membership in the Indian tribe and shall not be given retroactive effect.”.

SEC. 303. EFFECTIVE DATE.

The amendments made by this title shall take effect on the date of the enactment of this Act and shall apply

1 with respect to any child custody proceeding in which a
 2 final decree has not been entered as of such date.

3 **TITLE IV—REVENUE OFFSETS**

4 **SEC. 400. AMENDMENT OF 1986 CODE.**

5 Except as otherwise expressly provided, whenever in
 6 this title an amendment or repeal is expressed in terms
 7 of an amendment to, or repeal of, a section or other provi-
 8 sion, the reference shall be considered to be made to a
 9 section or other provision of the Internal Revenue Code
 10 of 1986.

11 **Subtitle A—Exclusion for Energy** 12 **Conservation Subsidies Limited** 13 **to Subsidies With Respect to** 14 **Dwelling Units**

15 **SEC. 401. EXCLUSION FOR ENERGY CONSERVATION SUB-** 16 **SIDIES LIMITED TO SUBSIDIES WITH RE-** 17 **SPECT TO DWELLING UNITS.**

18 (a) IN GENERAL.—Paragraph (1) of section 136(c)
 19 (defining energy conservation measure) is amended by
 20 striking “energy demand—” and all that follows and in-
 21 serting “energy demand with respect to a dwelling unit.”

22 (b) CONFORMING AMENDMENTS.—

23 (1) Subsection (a) of section 136 is amended to
 24 read as follows:

1 “(a) EXCLUSION.—Gross income shall not include
 2 the value of any subsidy provided (directly or indirectly)
 3 by a public utility to a customer for the purchase or instal-
 4 lation of any energy conservation measure.”

5 (2) Paragraph (2) of section 136(c) is amend-
 6 ed—

7 (A) by striking subparagraph (A) and by
 8 redesignating subparagraphs (B) and (C) as
 9 subparagraphs (A) and (B), respectively, and
 10 (B) by striking “AND SPECIAL RULES” in
 11 the paragraph heading.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to amounts received after Decem-
 14 ber 31, 1996, unless received pursuant to a written bind-
 15 ing contract in effect on September 13, 1995, and at all
 16 times thereafter.

17 **Subtitle B—Foreign Trust Tax** 18 **Compliance**

19 **SEC. 411. IMPROVED INFORMATION REPORTING ON FOR-** 20 **EIGN TRUSTS.**

21 (a) IN GENERAL.—Section 6048 (relating to returns
 22 as to certain foreign trusts) is amended to read as follows:

23 **“SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN** 24 **FOREIGN TRUSTS.**

25 “(a) NOTICE OF CERTAIN EVENTS.—

1 “(1) GENERAL RULE.—On or before the 90th
2 day (or such later day as the Secretary may pre-
3 scribe) after any reportable event, the responsible
4 party shall provide written notice of such event to
5 the Secretary in accordance with paragraph (2).

6 “(2) CONTENTS OF NOTICE.—The notice re-
7 quired by paragraph (1) shall contain such informa-
8 tion as the Secretary may prescribe, including—

9 “(A) the amount of money or other prop-
10 erty (if any) transferred to the trust in connec-
11 tion with the reportable event, and

12 “(B) the identity of the trust and of each
13 trustee and beneficiary (or class of bene-
14 ficiaries) of the trust.

15 “(3) REPORTABLE EVENT.—For purposes of
16 this subsection—

17 “(A) IN GENERAL.—The term ‘reportable
18 event’ means—

19 “(i) the creation of any foreign trust
20 by a United States person,

21 “(ii) the transfer of any money or
22 property (directly or indirectly) to a for-
23 eign trust by a United States person, in-
24 cluding a transfer by reason of death, and

1 “(iii) the death of a citizen or resident
2 of the United States if—

3 “(I) the decedent was treated as
4 the owner of any portion of a foreign
5 trust under the rules of subpart E of
6 part I of subchapter J of chapter 1,
7 or

8 “(II) any portion of a foreign
9 trust was included in the gross estate
10 of the decedent.

11 “(B) EXCEPTIONS.—

12 “(i) FAIR MARKET VALUE SALES.—
13 Subparagraph (A)(ii) shall not apply to
14 any transfer of property to a trust in ex-
15 change for consideration of at least the fair
16 market value of the transferred property.
17 For purposes of the preceding sentence,
18 consideration other than cash shall be
19 taken into account at its fair market value
20 and the rules of section 679(a)(3) shall
21 apply.

22 “(ii) DEFERRED COMPENSATION AND
23 CHARITABLE TRUSTS.—Subparagraph (A)
24 shall not apply with respect to a trust
25 which is—

1 “(I) described in section 402(b),
2 404(a)(4), or 404A, or

3 “(II) determined by the Sec-
4 retary to be described in section
5 501(c)(3).

6 “(4) RESPONSIBLE PARTY.—For purposes of
7 this subsection, the term ‘responsible party’
8 means—

9 “(A) the grantor in the case of the cre-
10 ation of an inter vivos trust,

11 “(B) the transferor in the case of a report-
12 able event described in paragraph (3)(A)(ii)
13 other than a transfer by reason of death, and

14 “(C) the executor of the decedent’s estate
15 in any other case.

16 “(b) UNITED STATES GRANTOR OF FOREIGN
17 TRUST.—

18 “(1) IN GENERAL.—If, at any time during any
19 taxable year of a United States person, such person
20 is treated as the owner of any portion of a foreign
21 trust under the rules of subpart E of part I of sub-
22 chapter J of chapter 1, such person shall be respon-
23 sible to ensure that—

24 “(A) such trust makes a return for such
25 year which sets forth a full and complete ac-

1 counting of all trust activities and operations
2 for the year, the name of the United States
3 agent for such trust, and such other informa-
4 tion as the Secretary may prescribe, and

5 “(B) such trust furnishes such information
6 as the Secretary may prescribe to each United
7 States person (i) who is treated as the owner of
8 any portion of such trust or (ii) who receives
9 (directly or indirectly) any distribution from the
10 trust.

11 “(2) TRUSTS NOT HAVING UNITED STATES
12 AGENT.—

13 “(A) IN GENERAL.—If the rules of this
14 paragraph apply to any foreign trust, the deter-
15 mination of amounts required to be taken into
16 account with respect to such trust by a United
17 States person under the rules of subpart E of
18 part I of subchapter J of chapter 1 shall be de-
19 termined by the Secretary.

20 “(B) UNITED STATES AGENT REQUIRED.—
21 The rules of this paragraph shall apply to any
22 foreign trust to which paragraph (1) applies un-
23 less such trust agrees (in such manner, subject
24 to such conditions, and at such time as the Sec-
25 retary shall prescribe) to authorize a United

1 States person to act as such trust's limited
2 agent solely for purposes of applying sections
3 7602, 7603, and 7604 with respect to—

4 “(i) any request by the Secretary to
5 examine records or produce testimony re-
6 lated to the proper treatment of amounts
7 required to be taken into account under
8 the rules referred to in subparagraph (A),
9 or

10 “(ii) any summons by the Secretary
11 for such records or testimony.

12 The appearance of persons or production of
13 records by reason of a United States person
14 being such an agent shall not subject such per-
15 sons or records to legal process for any purpose
16 other than determining the correct treatment
17 under this title of the amounts required to be
18 taken into account under the rules referred to
19 in subparagraph (A). A foreign trust which ap-
20 points an agent described in this subparagraph
21 shall not be considered to have an office or a
22 permanent establishment in the United States,
23 or to be engaged in a trade or business in the
24 United States, solely because of the activities of
25 such agent pursuant to this subsection.

1 “(C) OTHER RULES TO APPLY.—Rules
2 similar to the rules of paragraphs (2) and (4)
3 of section 6038A(e) shall apply for purposes of
4 this paragraph.

5 “(c) REPORTING BY UNITED STATES BENEFICIARIES
6 OF FOREIGN TRUSTS.—

7 “(1) IN GENERAL.—If any United States per-
8 son receives (directly or indirectly) during any tax-
9 able year of such person any distribution from a for-
10 eign trust, such person shall make a return with re-
11 spect to such trust for such year which includes—

12 “(A) the name of such trust,

13 “(B) the aggregate amount of the distribu-
14 tions so received from such trust during such
15 taxable year, and

16 “(C) such other information as the Sec-
17 retary may prescribe.

18 “(2) INCLUSION IN INCOME IF RECORDS NOT
19 PROVIDED.—

20 “(A) IN GENERAL.—If adequate records
21 are not provided to the Secretary to determine
22 the proper treatment of any distribution from a
23 foreign trust, such distribution shall be treated
24 as an accumulation distribution includible in
25 the gross income of the distributee under chap-

1 ter 1. To the extent provided in regulations, the
2 preceding sentence shall not apply if the foreign
3 trust elects to be subject to rules similar to the
4 rules of subsection (b)(2)(B).

5 “(B) APPLICATION OF ACCUMULATION
6 DISTRIBUTION RULES.—For purposes of apply-
7 ing section 668 in a case to which subpara-
8 graph (A) applies, the applicable number of
9 years for purposes of section 668(a) shall be $\frac{1}{2}$
10 of the number of years the trust has been in ex-
11 istence.

12 “(d) SPECIAL RULES.—

13 “(1) DETERMINATION OF WHETHER UNITED
14 STATES PERSON MAKES TRANSFER OR RECEIVES
15 DISTRIBUTION.—For purposes of this section, in de-
16 termining whether a United States person makes a
17 transfer to, or receives a distribution from, a foreign
18 trust, the fact that a portion of such trust is treated
19 as owned by another person under the rules of sub-
20 part E of part I of subchapter J of chapter 1 shall
21 be disregarded.

22 “(2) DOMESTIC TRUSTS WITH FOREIGN ACTIVI-
23 TIES.—To the extent provided in regulations, a trust
24 which is a United States person shall be treated as
25 a foreign trust for purposes of this section and sec-

1 tion 6677 if such trust has substantial activities, or
 2 holds substantial property, outside the United
 3 States.

4 “(3) TIME AND MANNER OF FILING INFORMA-
 5 TION.—Any notice or return required under this sec-
 6 tion shall be made at such time and in such manner
 7 as the Secretary shall prescribe.

8 “(4) MODIFICATION OF RETURN REQUIRE-
 9 MENTS.—The Secretary is authorized to suspend or
 10 modify any requirement of this section if the Sec-
 11 retary determines that the United States has no sig-
 12 nificant tax interest in obtaining the required infor-
 13 mation.”.

14 (b) INCREASED PENALTIES.—Section 6677 (relating
 15 to failure to file information returns with respect to cer-
 16 tain foreign trusts) is amended to read as follows:

17 **“SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT**
 18 **TO CERTAIN FOREIGN TRUSTS.**

19 “(a) CIVIL PENALTY.—In addition to any criminal
 20 penalty provided by law, if any notice or return required
 21 to be filed by section 6048—

22 “(1) is not filed on or before the time provided
 23 in such section, or

1 “(2) does not include all the information re-
2 quired pursuant to such section or includes incorrect
3 information,

4 the person required to file such notice or return shall pay
5 a penalty equal to 35 percent of the gross reportable
6 amount. If any failure described in the preceding sentence
7 continues for more than 90 days after the day on which
8 the Secretary mails notice of such failure to the person
9 required to pay such penalty, such person shall pay a pen-
10 alty (in addition to the amount determined under the pre-
11 ceding sentence) of \$10,000 for each 30-day period (or
12 fraction thereof) during which such failure continues after
13 the expiration of such 90-day period. In no event shall the
14 penalty under this subsection with respect to any failure
15 exceed the gross reportable amount.

16 “(b) SPECIAL RULES FOR RETURNS UNDER SEC-
17 TION 6048(b).—In the case of a return required under
18 section 6048(b)—

19 “(1) the United States person referred to in
20 such section shall be liable for the penalty imposed
21 by subsection (a), and

22 “(2) subsection (a) shall be applied by sub-
23 stituting ‘5 percent’ for ‘35 percent’.

1 “(c) GROSS REPORTABLE AMOUNT.—For purposes
2 of subsection (a), the term ‘gross reportable amount’
3 means—

4 “(1) the gross value of the property involved in
5 the event (determined as of the date of the event)
6 in the case of a failure relating to section 6048(a),

7 “(2) the gross value of the portion of the trust’s
8 assets at the close of the year treated as owned by
9 the United States person in the case of a failure re-
10 lating to section 6048(b)(1), and

11 “(3) the gross amount of the distributions in
12 the case of a failure relating to section 6048(c).

13 “(d) REASONABLE CAUSE EXCEPTION.—No penalty
14 shall be imposed by this section on any failure which is
15 shown to be due to reasonable cause and not due to willful
16 neglect. The fact that a foreign jurisdiction would impose
17 a civil or criminal penalty on the taxpayer (or any other
18 person) for disclosing the required information is not rea-
19 sonable cause.

20 “(e) DEFICIENCY PROCEDURES NOT TO APPLY.—
21 Subchapter B of chapter 63 (relating to deficiency proce-
22 dures for income, estate, gift, and certain excise taxes)
23 shall not apply in respect of the assessment or collection
24 of any penalty imposed by subsection (a).”.

25 (c) CONFORMING AMENDMENTS.—

1 (1) Paragraph (2) of section 6724(d) is amend-
 2 ed by striking “or” at the end of subparagraph (S),
 3 by striking the period at the end of subparagraph
 4 (T) and inserting “, or”, and by inserting after sub-
 5 paragraph (T) the following new subparagraph:

6 “(U) section 6048(b)(1)(B) (relating to
 7 foreign trust reporting requirements).”.

8 (2) The table of sections for subpart B of part
 9 III of subchapter A of chapter 61 is amended by
 10 striking the item relating to section 6048 and insert-
 11 ing the following new item:

“Sec. 6048. Information with respect to certain foreign trusts.”.

12 (3) The table of sections for part I of sub-
 13 chapter B of chapter 68 is amended by striking the
 14 item relating to section 6677 and inserting the fol-
 15 lowing new item:

“Sec. 6677. Failure to file information with respect to certain foreign trusts.”.

16 (d) EFFECTIVE DATES.—

17 (1) REPORTABLE EVENTS.—To the extent re-
 18 lated to subsection (a) of section 6048 of the Inter-
 19 nal Revenue Code of 1986, as amended by this sec-
 20 tion, the amendments made by this section shall
 21 apply to reportable events (as defined in such section
 22 6048) occurring after the date of the enactment of
 23 this Act.

1 (2) GRANTOR TRUST REPORTING.—To the ex-
 2 tent related to subsection (b) of such section 6048,
 3 the amendments made by this section shall apply to
 4 taxable years of United States persons beginning
 5 after December 31, 1995.

6 (3) REPORTING BY UNITED STATES BENE-
 7 FICIARIES.—To the extent related to subsection (c)
 8 of such section 6048, the amendments made by this
 9 section shall apply to distributions received after the
 10 date of the enactment of this Act.

11 **SEC. 412. COMPARABLE PENALTIES FOR FAILURE TO FILE**
 12 **RETURN RELATING TO TRANSFERS TO FOR-**
 13 **EIGN ENTITIES.**

14 (a) IN GENERAL.—Section 1494 is amended by add-
 15 ing at the end the following new subsection:

16 “(c) PENALTY.—In the case of any failure to file a
 17 return required by the Secretary with respect to any trans-
 18 fer described in section 1491, the person required to file
 19 such return shall be liable for the penalties provided in
 20 section 6677 in the same manner as if such failure were
 21 a failure to file a notice under section 6048(a).”.

22 (b) EFFECTIVE DATE.—The amendment made by
 23 subsection (a) shall apply to transfers after the date of
 24 the enactment of this Act.

1 **SEC. 413. MODIFICATIONS OF RULES RELATING TO FOR-**
2 **EIGN TRUSTS HAVING ONE OR MORE UNITED**
3 **STATES BENEFICIARIES.**

4 (a) TREATMENT OF TRUST OBLIGATIONS, ETC.—

5 (1) Paragraph (2) of section 679(a) is amended
6 by striking subparagraph (B) and inserting the fol-
7 lowing:

8 “(B) TRANSFERS AT FAIR MARKET
9 VALUE.—To any transfer of property to a trust
10 in exchange for consideration of at least the fair
11 market value of the transferred property. For
12 purposes of the preceding sentence, consider-
13 ation other than cash shall be taken into ac-
14 count at its fair market value.”.

15 (2) Subsection (a) of section 679 (relating to
16 foreign trusts having one or more United States
17 beneficiaries) is amended by adding at the end the
18 following new paragraph:

19 “(3) CERTAIN OBLIGATIONS NOT TAKEN INTO
20 ACCOUNT UNDER FAIR MARKET VALUE EXCEP-
21 TION.—

22 “(A) IN GENERAL.—In determining wheth-
23 er paragraph (2)(B) applies to any transfer by
24 a person described in clause (ii) or (iii) of sub-
25 paragraph (C), there shall not be taken into ac-
26 count—

1 “(i) except as provided in regulations,
 2 any obligation of a person described in
 3 subparagraph (C), and

4 “(ii) to the extent provided in regula-
 5 tions, any obligation which is guaranteed
 6 by a person described in subparagraph (C).

7 “(B) TREATMENT OF PRINCIPAL PAY-
 8 MENTS ON OBLIGATION.—Principal payments
 9 by the trust on any obligation referred to in
 10 subparagraph (A) shall be taken into account
 11 on and after the date of the payment in deter-
 12 mining the portion of the trust attributable to
 13 the property transferred.

14 “(C) PERSONS DESCRIBED.—The persons
 15 described in this subparagraph are—

16 “(i) the trust,

17 “(ii) any grantor or beneficiary of the
 18 trust, and

19 “(iii) any person who is related (with-
 20 in the meaning of section 643(i)(2)(B)) to
 21 any grantor or beneficiary of the trust.”.

22 (b) EXEMPTION OF TRANSFERS TO CHARITABLE
 23 TRUSTS.—Subsection (a) of section 679 is amended by
 24 striking “section 404(a)(4) or 404A” and inserting “sec-
 25 tion 6048(a)(3)(B)(ii)”.

1 (c) OTHER MODIFICATIONS.—Subsection (a) of sec-
 2 tion 679 is amended by adding at the end the following
 3 new paragraphs:

4 “(4) SPECIAL RULES APPLICABLE TO FOREIGN
 5 GRANTOR WHO LATER BECOMES A UNITED STATES
 6 PERSON.—

7 “(A) IN GENERAL.—If a nonresident alien
 8 individual has a residency starting date within
 9 5 years after directly or indirectly transferring
 10 property to a foreign trust, this section and sec-
 11 tion 6048 shall be applied as if such individual
 12 transferred to such trust on the residency start-
 13 ing date an amount equal to the portion of such
 14 trust attributable to the property transferred by
 15 such individual to such trust in such transfer.

16 “(B) TREATMENT OF UNDISTRIBUTED IN-
 17 COME.—For purposes of this section, undistrib-
 18 uted net income for periods before such individ-
 19 ual’s residency starting date shall be taken into
 20 account in determining the portion of the trust
 21 which is attributable to property transferred by
 22 such individual to such trust but shall not oth-
 23 erwise be taken into account.

24 “(C) RESIDENCY STARTING DATE.—For
 25 purposes of this paragraph, an individual’s resi-

1 dency starting date is the residency starting
2 date determined under section 7701(b)(2)(A).

3 “(5) OUTBOUND TRUST MIGRATIONS.—If—

4 “(A) an individual who is a citizen or resi-
5 dent of the United States transferred property
6 to a trust which was not a foreign trust, and

7 “(B) such trust becomes a foreign trust
8 while such individual is alive,

9 then this section and section 6048 shall be applied
10 as if such individual transferred to such trust on the
11 date such trust becomes a foreign trust an amount
12 equal to the portion of such trust attributable to the
13 property previously transferred by such individual to
14 such trust. A rule similar to the rule of paragraph
15 (4)(B) shall apply for purposes of this paragraph.”.

16 (d) MODIFICATIONS RELATING TO WHETHER TRUST
17 HAS UNITED STATES BENEFICIARIES.—Subsection (c) of
18 section 679 is amended by adding at the end the following
19 new paragraph:

20 “(3) CERTAIN UNITED STATES BENEFICIARIES
21 DISREGARDED.—A beneficiary shall not be treated
22 as a United States person in applying this section
23 with respect to any transfer of property to foreign
24 trust if such beneficiary first became a United

1 States person more than 5 years after the date of
2 such transfer.”.

3 (e) TECHNICAL AMENDMENT.—Subparagraph (A) of
4 section 679(c)(2) is amended to read as follows:

5 “(A) in the case of a foreign corporation,
6 such corporation is a controlled foreign corpora-
7 tion (as defined in section 957(a)),”.

8 (f) REGULATIONS.—Section 679 is amended by add-
9 ing at the end the following new subsection:

10 “(d) REGULATIONS.—The Secretary shall prescribe
11 such regulations as may be necessary or appropriate to
12 carry out the purposes of this section.”.

13 (g) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to transfers of property after Feb-
15 ruary 6, 1995.

16 **SEC. 414. FOREIGN PERSONS NOT TO BE TREATED AS OWN-**
17 **ERS UNDER GRANTOR TRUST RULES.**

18 (a) GENERAL RULE.—

19 (1) Subsection (f) of section 672 (relating to
20 special rule where grantor is foreign person) is
21 amended to read as follows:

22 “(f) SUBPART NOT TO RESULT IN FOREIGN OWNER-
23 SHIP.—

24 “(1) IN GENERAL.—Notwithstanding any other
25 provision of this subpart, this subpart shall apply

1 only to the extent such application results in an
2 amount (if any) being currently taken into account
3 (directly or through 1 or more entities) under this
4 chapter in computing the income of a citizen or resi-
5 dent of the United States or a domestic corporation.

6 “(2) EXCEPTIONS.—

7 “(A) CERTAIN REVOCABLE AND IRREV-
8 OCABLE TRUSTS.—Paragraph (1) shall not
9 apply to any portion of a trust if—

10 “(i) the power to revest absolutely in
11 the grantor title to the trust property to
12 which such portion is attributable is exer-
13 cisable solely by the grantor without the
14 approval or consent of any other person or
15 with the consent of a related or subordi-
16 nate party who is subservient to the grant-
17 or, or

18 “(ii) the only amounts distributable
19 from such portion (whether income or cor-
20 pus) during the lifetime of the grantor are
21 amounts distributable to the grantor or the
22 spouse of the grantor.

23 “(B) COMPENSATORY TRUSTS.—Except as
24 provided in regulations, paragraph (1) shall not
25 apply to any portion of a trust distributions

1 from which are taxable as compensation for
2 services rendered.

3 “(3) SPECIAL RULES.—Except as otherwise
4 provided in regulations prescribed by the Sec-
5 retary—

6 “(A) a controlled foreign corporation (as
7 defined in section 957) shall be treated as a do-
8 mestic corporation for purposes of paragraph
9 (1), and

10 “(B) paragraph (1) shall not apply for
11 purposes of applying section 1296.

12 “(4) RECHARACTERIZATION OF PURPORTED
13 GIFTS.—In the case of any transfer directly or indi-
14 rectly from a partnership or foreign corporation
15 which the transferee treats as a gift or bequest, the
16 Secretary may recharacterize such transfer in such
17 circumstances as the Secretary determines to be ap-
18 propriate to prevent the avoidance of the purposes of
19 this subsection.

20 “(5) SPECIAL RULE WHERE GRANTOR IS FOR-
21 EIGN PERSON.—If—

22 “(A) but for this subsection, a foreign per-
23 son would be treated as the owner of any por-
24 tion of a trust, and

1 “(B) such trust has a beneficiary who is a
 2 United States person,
 3 such beneficiary shall be treated as the grantor of
 4 such portion to the extent such beneficiary or any
 5 member of such beneficiary’s family (within the
 6 meaning of section 267(c)(4)) has made (directly or
 7 indirectly) transfers of property (other than in a sale
 8 for full and adequate consideration) to such foreign
 9 person. For purposes of the preceding sentence, any
 10 gift shall not be taken into account to the extent
 11 such gift would be excluded from taxable gifts under
 12 section 2503(b).

13 “(6) REGULATIONS.—The Secretary shall pre-
 14 scribe such regulations as may be necessary or ap-
 15 propriate to carry out the purposes of this sub-
 16 section, including regulations providing that para-
 17 graph (1) shall not apply in appropriate cases.”.

18 (2) The last sentence of subsection (c) of sec-
 19 tion 672 of such Code is amended by inserting “sub-
 20 section (f) and” before “sections 674”.

21 (b) CREDIT FOR CERTAIN TAXES.—

22 (1) Paragraph (2) of section 665(d) is amended
 23 by adding at the end the following new sentence:
 24 “Under rules or regulations prescribed by the Sec-
 25 retary, in the case of any foreign trust of which the

1 settlor or another person would be treated as owner
 2 of any portion of the trust under subpart E but for
 3 section 672(f), the term ‘taxes imposed on the trust’
 4 includes the allocable amount of any income, war
 5 profits, and excess profits taxes imposed by any for-
 6 eign country or possession of the United States on
 7 the settlor or such other person in respect of trust
 8 income.”.

9 (2) Paragraph (5) of section 901(b) is amended
 10 by adding at the end the following new sentence:
 11 “Under rules or regulations prescribed by the Sec-
 12 retary, in the case of any foreign trust of which the
 13 settlor or another person would be treated as owner
 14 of any portion of the trust under subpart E but for
 15 section 672(f), the allocable amount of any income,
 16 war profits, and excess profits taxes imposed by any
 17 foreign country or possession of the United States
 18 on the settlor or such other person in respect of
 19 trust income.”.

20 (c) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
 21 THROUGH NOMINEES.—

22 (1) Section 643 is amended by adding at the
 23 end the following new subsection:

24 “(h) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
 25 THROUGH NOMINEES.—For purposes of this part, any

1 amount paid to a United States person which is derived
2 directly or indirectly from a foreign trust of which the
3 payor is not the grantor shall be deemed in the year of
4 payment to have been directly paid by the foreign trust
5 to such United States person.”.

6 (2) Section 665 is amended by striking sub-
7 section (c).

8 (d) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided by para-
10 graph (2), the amendments made by this section
11 shall take effect on the date of the enactment of this
12 Act.

13 (2) EXCEPTION FOR CERTAIN TRUSTS.—The
14 amendments made by this section shall not apply to
15 any trust—

16 (A) which is treated as owned by the
17 grantor under section 676 or 677 (other than
18 subsection (a)(3) thereof) of the Internal Reve-
19 nue Code of 1986, and

20 (B) which is in existence on September 19,
21 1995.

22 The preceding sentence shall not apply to the por-
23 tion of any such trust attributable to any transfer to
24 such trust after September 19, 1995.

25 (e) TRANSITIONAL RULE.—If—

1 (1) by reason of the amendments made by this
 2 section, any person other than a United States per-
 3 son ceases to be treated as the owner of a portion
 4 of a domestic trust, and

5 (2) before January 1, 1997, such trust becomes
 6 a foreign trust, or the assets of such trust are trans-
 7 ferred to a foreign trust,

8 no tax shall be imposed by section 1491 of the Internal
 9 Revenue Code of 1986 by reason of such trust becoming
 10 a foreign trust or the assets of such trust being trans-
 11 ferred to a foreign trust.

12 **SEC. 415. INFORMATION REPORTING REGARDING FOREIGN**
 13 **GIFTS.**

14 (a) IN GENERAL.—Subpart A of part III of sub-
 15 chapter A of chapter 61 is amended by inserting after sec-
 16 tion 6039E the following new section:

17 **“SEC. 6039F. NOTICE OF LARGE GIFTS RECEIVED FROM**
 18 **FOREIGN PERSONS.**

19 “(a) IN GENERAL.—If the value of the aggregate for-
 20 eign gifts received by a United States person (other than
 21 an organization described in section 501(c) and exempt
 22 from tax under section 501(a)) during any taxable year
 23 exceeds \$10,000, such United States person shall furnish
 24 (at such time and in such manner as the Secretary shall
 25 prescribe) such information as the Secretary may pre-

1 scribe regarding each foreign gift received during such
2 year.

3 “(b) FOREIGN GIFT.—For purposes of this section,
4 the term ‘foreign gift’ means any amount received from
5 a person other than a United States person which the re-
6 cipient treats as a gift or bequest. Such term shall not
7 include any qualified transfer (within the meaning of sec-
8 tion 2503(e)(2)) or any distribution properly disclosed in
9 a return under section 6048(c).

10 “(c) PENALTY FOR FAILURE TO FILE INFORMA-
11 TION.—

12 “(1) IN GENERAL.—If a United States person
13 fails to furnish the information required by sub-
14 section (a) with respect to any foreign gift within
15 the time prescribed therefor (including extensions)—

16 “(A) the tax consequences of the receipt of
17 such gift shall be determined by the Secretary,
18 and

19 “(B) such United States person shall pay
20 (upon notice and demand by the Secretary and
21 in the same manner as tax) an amount equal to
22 5 percent of the amount of such foreign gift for
23 each month for which the failure continues (not
24 to exceed 25 percent of such amount in the ag-
25 gregate).

1 “(2) REASONABLE CAUSE EXCEPTION.—Para-
2 graph (1) shall not apply to any failure to report a
3 foreign gift if the United States person shows that
4 the failure is due to reasonable cause and not due
5 to willful neglect.

6 “(d) COST-OF-LIVING ADJUSTMENT.—In the case of
7 any taxable year beginning after December 31, 1996, the
8 \$10,000 amount under subsection (a) shall be increased
9 by an amount equal to the product of such amount and
10 the cost-of-living adjustment for such taxable year under
11 section 1(f)(3), except that subparagraph (B) thereof shall
12 be applied by substituting ‘1995’ for ‘1992’.

13 “(e) REGULATIONS.—The Secretary shall prescribe
14 such regulations as may be necessary or appropriate to
15 carry out the purposes of this section.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 for such subpart is amended by inserting after the item
18 relating to section 6039E the following new item:

“Sec. 6039F. Notice of large gifts received from foreign persons.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to amounts received after the date
21 of the enactment of this Act in taxable years ending after
22 such date.

1 **SEC. 416. MODIFICATION OF RULES RELATING TO FOREIGN**
2 **TRUSTS WHICH ARE NOT GRANTOR TRUSTS.**

3 (a) MODIFICATION OF INTEREST CHARGE ON ACCU-
4 MULATION DISTRIBUTIONS.—Subsection (a) of section
5 668 (relating to interest charge on accumulation distribu-
6 tions from foreign trusts) is amended to read as follows:

7 “(a) GENERAL RULE.—For purposes of the tax de-
8 termined under section 667(a)—

9 “(1) INTEREST DETERMINED USING UNDER-
10 PAYMENT RATES.—The interest charge determined
11 under this section with respect to any distribution is
12 the amount of interest which would be determined
13 on the partial tax computed under section 667(b) for
14 the period described in paragraph (2) using the
15 rates and the method under section 6621 applicable
16 to underpayments of tax.

17 “(2) PERIOD.—For purposes of paragraph (1),
18 the period described in this paragraph is the period
19 which begins on the date which is the applicable
20 number of years before the date of the distribution
21 and which ends on the date of the distribution.

22 “(3) APPLICABLE NUMBER OF YEARS.—For
23 purposes of paragraph (2)—

24 “(A) IN GENERAL.—The applicable num-
25 ber of years with respect to a distribution is the
26 number determined by dividing—

1 “(i) the sum of the products described
2 in subparagraph (B) with respect to each
3 undistributed income year, by

4 “(ii) the aggregate undistributed net
5 income.

6 The quotient determined under the preceding
7 sentence shall be rounded under procedures
8 prescribed by the Secretary.

9 “(B) PRODUCT DESCRIBED.—For pur-
10 poses of subparagraph (A), the product de-
11 scribed in this subparagraph with respect to
12 any undistributed income year is the product
13 of—

14 “(i) the undistributed net income for
15 such year, and

16 “(ii) the sum of the number of taxable
17 years between such year and the taxable
18 year of the distribution (counting in each
19 case the undistributed income year but not
20 counting the taxable year of the distribu-
21 tion).

22 “(4) UNDISTRIBUTED INCOME YEAR.—For pur-
23 poses of this subsection, the term ‘undistributed in-
24 come year’ means any prior taxable year of the trust
25 for which there is undistributed net income, other

1 than a taxable year during all of which the bene-
2 ficiary receiving the distribution was not a citizen or
3 resident of the United States.

4 “(5) DETERMINATION OF UNDISTRIBUTED NET
5 INCOME.—Notwithstanding section 666, for pur-
6 poses of this subsection, an accumulation distribu-
7 tion from the trust shall be treated as reducing pro-
8 portionately the undistributed net income for undis-
9 tributed income years.

10 “(6) PERIODS BEFORE 1996.—Interest for the
11 portion of the period described in paragraph (2)
12 which occurs before January 1, 1996, shall be deter-
13 mined—

14 “(A) by using an interest rate of 6 percent,

15 and

16 “(B) without compounding until January
17 1, 1996.”.

18 (b) ABUSIVE TRANSACTIONS.—Section 643(a) is
19 amended by inserting after paragraph (6) the following
20 new paragraph:

21 “(7) ABUSIVE TRANSACTIONS.—The Secretary
22 shall prescribe such regulations as may be necessary
23 or appropriate to carry out the purposes of this part,
24 including regulations to prevent avoidance of such
25 purposes.”.

1 (c) TREATMENT OF LOANS FROM TRUSTS.—

2 (1) IN GENERAL.—Section 643 (relating to
3 definitions applicable to subparts A, B, C, and D)
4 is amended by adding at the end the following new
5 subsection:

6 “(i) LOANS FROM FOREIGN TRUSTS.—For purposes
7 of subparts B, C, and D—

8 “(1) GENERAL RULE.—Except as provided in
9 regulations, if a foreign trust makes a loan of cash
10 or marketable securities directly or indirectly to—

11 “(A) any grantor or beneficiary of such
12 trust who is a United States person, or

13 “(B) any United States person not de-
14 scribed in subparagraph (A) who is related to
15 such grantor or beneficiary,

16 the amount of such loan shall be treated as a dis-
17 tribution by such trust to such grantor or bene-
18 ficiary (as the case may be).

19 “(2) DEFINITIONS AND SPECIAL RULES.—For
20 purposes of this subsection—

21 “(A) CASH.—The term ‘cash’ includes for-
22 eign currencies and cash equivalents.

23 “(B) RELATED PERSON.—

24 “(i) IN GENERAL.—A person is relat-
25 ed to another person if the relationship be-

1 tween such persons would result in a dis-
2 allowance of losses under section 267 or
3 707(b). In applying section 267 for pur-
4 poses of the preceding sentence, section
5 267(c)(4) shall be applied as if the family
6 of an individual includes the spouses of the
7 members of the family.

8 “(ii) ALLOCATION.—If any person de-
9 scribed in paragraph (1)(B) is related to
10 more than one person, the grantor or bene-
11 ficiary to whom the treatment under this
12 subsection applies shall be determined
13 under regulations prescribed by the Sec-
14 retary.

15 “(C) EXCLUSION OF TAX-EXEMPTS.—The
16 term ‘United States person’ does not include
17 any entity exempt from tax under this chapter.

18 “(D) TRUST NOT TREATED AS SIMPLE
19 TRUST.—Any trust which is treated under this
20 subsection as making a distribution shall be
21 treated as not described in section 651.

22 “(3) SUBSEQUENT TRANSACTIONS REGARDING
23 LOAN PRINCIPAL.—If any loan is taken into account
24 under paragraph (1), any subsequent transaction be-
25 tween the trust and the original borrower regarding

1 the principal of the loan (by way of complete or par-
2 tial repayment, satisfaction, cancellation, discharge,
3 or otherwise) shall be disregarded for purposes of
4 this title.”.

5 (2) TECHNICAL AMENDMENT.—Paragraph (8)
6 of section 7872(f) is amended by inserting “,
7 643(i),” before “or 1274” each place it appears.

8 (d) EFFECTIVE DATES.—

9 (1) INTEREST CHARGE.—The amendment made
10 by subsection (a) shall apply to distributions after
11 the date of the enactment of this Act.

12 (2) ABUSIVE TRANSACTIONS.—The amendment
13 made by subsection (b) shall take effect on the date
14 of the enactment of this Act.

15 (3) LOANS FROM TRUSTS.—The amendment
16 made by subsection (c) shall apply to loans of cash
17 or marketable securities made after September 19,
18 1995.

19 **SEC. 417. RESIDENCE OF TRUSTS, ETC.**

20 (a) TREATMENT AS UNITED STATES PERSON.—

21 (1) IN GENERAL.—Paragraph (30) of section
22 7701(a) is amended by striking “and” at the end of
23 subparagraph (C) and by striking subparagraph (D)
24 and by inserting the following new subparagraphs:

1 “(D) any estate (other than a foreign es-
 2 tate, within the meaning of paragraph (31)),
 3 and

4 “(E) any trust if—

5 “(i) a court within the United States
 6 is able to exercise primary supervision over
 7 the administration of the trust, and

8 “(ii) one or more United States fidu-
 9 ciaries have the authority to control all
 10 substantial decisions of the trust.”.

11 (2) CONFORMING AMENDMENT.—Paragraph
 12 (31) of section 7701(a) is amended to read as fol-
 13 lows:

14 “(31) FOREIGN ESTATE OR TRUST.—

15 “(A) FOREIGN ESTATE.—The term ‘for-
 16 eign estate’ means an estate the income of
 17 which, from sources without the United States
 18 which is not effectively connected with the con-
 19 duct of a trade or business within the United
 20 States, is not includible in gross income under
 21 subtitle A.

22 “(B) FOREIGN TRUST.—The term ‘foreign
 23 trust’ means any trust other than a trust de-
 24 scribed in subparagraph (E) of paragraph
 25 (30).”.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply—

3 (A) to taxable years beginning after De-
4 cember 31, 1996, or

5 (B) at the election of the trustee of a
6 trust, to taxable years ending after the date of
7 the enactment of this Act.

8 Such an election, once made, shall be irrevocable.

9 (b) DOMESTIC TRUSTS WHICH BECOME FOREIGN
10 TRUSTS.—

11 (1) IN GENERAL.—Section 1491 (relating to
12 imposition of tax on transfers to avoid income tax)
13 is amended by adding at the end the following new
14 flush sentence:

15 “If a trust which is not a foreign trust becomes a foreign
16 trust, such trust shall be treated for purposes of this sec-
17 tion as having transferred, immediately before becoming
18 a foreign trust, all of its assets to a foreign trust.”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by this subsection shall take effect on the date of the
21 enactment of this Act.

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